IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6745 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DY.ENGINEER - Petitioner(s)

Versus

ANILKUMAR NARSINHBHAI BAROT - Respondent(s)

==========

Appearance :

MR SHASHIKANT S GADE for Petitioner No(s).: 1.

MR DJ BHATT for Respondent No(s).: 1.

==========

CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 26/07/2005

ORAL JUDGMENT

1. Rule. Shri D.J.Bhatt, learned advocate waives service of rule on behalf of the respondent workman. With the consent of the learned advocates for the parties, the matter is heard

finally today.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner corporation has challenged the legality and validity of the judgment and order passed by the Labour Court, Kalol dated January 27, 2005 passed in Reference (LCK) No.414 of 1994 in allowing the said reference directing the petitioner to reinstate the respondent workman with continuity of service and backwages. It appears from the record that the respondent workman was serving as the daily wager with the petitioner corporation and according to the respondent workman, he worked for more than three years and his services came to be terminated with effect from 30th July, 1993 without making payment of notice pay and / or retrenchment compensation and/or without following any procedure as required under the provisions of the Industrial Disputes Act, 1947. The respondent workman raised the industrial dispute challenging the alleged termination which was referred to the Labour Court, Kalol for its adjudication being Reference (LCK) No.414/94. The main and only contention submitted on behalf of the petitioner corporation was that appointment of the respondent workman was appointed for a fixed period / term and under the particular project and therefore, and the respondent was serving as daily wager and therefore, retrenchment compensation is not required to be paid or he is not entitled to any notice pay considering Section-2(oo)(bb) of the Industrial Disputes Act. The Labour Court not accepted the said

plea with regard to appointment on a particular project and / or scheme and / or for a particular period and having held that there is breach of Section-25-F of the Industrial Disputes Act allowed the reference by directing the petitioner to reinstate the respondent workman with full backwages and continuity of services. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Kalol passed in Reference (LCK) No.414 of 1994 the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri Shashikant Gade, learned advocate for the petitioner has vehemently submitted that the Labour Court has materially erred in not appreciating the fact that appointment of the respondent workman was for a particular period and duration and on a particular project and therefore, there was no question of following the procedure as required under Section-25-F of the Industrial Disputes Act, 1947. He has also further submitted that finding of the Labour Court with regard to breach of Section-25-G of the Act is also contrary to the evidence on record and therefore, it is requested to allow the present special civil application. He has also further submitted that considering the service tenure of the respondent workman i.e three years and considering the fact that he was the daily wager and was offered work not everyday but as and when his services were required, the order passed by the Labour Court with regard to full backwages is also erroneous. He has

relied upon the judgment of the Hon'ble Supreme Court in case of GENERAL MANAGER, HARYANA ROADWAYS V. RUDHAN SINGH, JT 2005 (6) SC 137.

4. In response to the notice issued by this Court, Shri D.J.Bhatt, learned advocate appears on behalf of the respondent workman. Affidavit in reply is also filed on behalf of the respondent workman. Shri Bhatt, learned advocate relying on the judgment of the Hon'ble Supreme Court of India in case of S.M.NILAJKAR AND OTHERS V. TELECOM DISTRICT MANAGER, KARNATAKA (2003) 4 SCC 27 reported in 2003 (4) SCC 27 has submitted that the petitioner has failed to prove that the appointment of the respondent workman was on a particular project and/or for a fixed term appointment and therefore, the Labour Court, has rightly not accepted the contention on behalf of the petitioner with regard to Section-2(oo)(bb) of the Act and has rightly held and there is breach of Section-25-F of the Industrial Disputes Act. So far as the back wags is concerned, he has requested that an appropriate order be passed in the facts and circumstances of the case, more particularly, considering the fact that the respondent workman is out of service from 1994.

5. Heard learned advocates appearing on behalf of the parties.

6. The main contention on behalf of the petitioner

corporation was with regard to appointment of the respondent workman on a particular project and a fixed term appointment. No appointment order is produced to show that the petitioner had informed that the respondent workman is on a particular project and his appointment is for a particular period and on completion of the project his services will be brought to an end. The Hon'ble Supreme Court in case of S.M.NILAJKAR AND OTHERS V. TELECOM DISTRICT MANAGER, KARNATAKA (2003) 4 SCC 27 (Supra) has held in para-13 as under :

"Termination of services of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied :

* That the workman was employed in a project or scheme on temporary duration.

* the Employment was on a contract, and not as a daily wager simpliciter, which provided interlia that the employment shall come to an end on expiry of the scheme or project;

* the Employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and

* the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.

7. Considering the aforesaid judgment and facts of the

present case, none of the conditions is fulfilled. Under the circumstances, the Labour Court has rightly disbelieved the contention on behalf of the petitioner with regard to appointment of the respondent workman on a particular project and/or upto a particular period. Under the circumstances, it is rightly held by the Labour Court that there is breach of Section-25-F of the I.D.Act. When it is found that there is breach of Section-25-F of the I.D.Act, the respondent workman is entitled to be reinstated in service.

8. So far as the question with regard to backwages is concerned, it is required to be considered that the respondent workman was serving as daily wager and he has worked only for three years. Considering the judgment of the Hon'ble Supreme Court in case of GENERAL MANAGER, HARYANA ROADWAYS V. RUDHAN SINGH, JT 2005 (6) SC 137 and aforesaid facts, if instead of full backwages, 50 % backwages is awarded, which will meet the ends of justice in the facts and circumstances of the case. Under the circumstances, the judgment and award passed by the Labour Court is required to be modified to the aforesaid extent.

9. For the reasons stated hereinabove, the petition is partly succeed. The judgment and award passed by the Labour Court, Kalol in Reference (LCK) No.414 of 1994 is modified to the extent that instead of full backwages, the respondent workman is entitled to 50 % backwages. Rest of the judgment and

award is not disturbed and the same would stand unaltered and the same is confirmed.

Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R.Shah, J.]

=kailash=